



1 fm
JAC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ATTORNEY DOCKET NO. 040447-0251

Applicant: Takashi NOZU
Title: IMAGE EXPANDING APPARATUS AND METHOD
THEREOF
Appl. No.: 10/632,923
Filing Date: 08/04/2003
Patent No.: 7,426,303
Grant Date: 09/16/2008
Examiner: Wenpeng Chen
Art Unit: 2624
Confirmation Number: 4950

RENEWED
REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Decision on the Request for Reconsideration of Patent Term Adjustment mailed July 6, 2009, in connection with the above-captioned patent, reconsideration is hereby requested of Applicant's original request.

In the Decision, the Petitions Attorney determined that the patent was entitled to 676 days of PTA. Applicants believe that the PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004).

Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated the patent term adjustment for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 993 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the application that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	1082 days
(b) Total Applicant delay:	89 days
Final PTA Determination:	993 days

Applicant therefore respectfully requests that the patent be accorded 993 days PTA. The patent is not subject to a terminal disclaimer.

Payment of the requisite fee was previously paid, with the Request filed on November 17, 2008. Applicant believes that no additional fees are due with this Renewed Petition, however, the Commissioner is hereby authorized to charge any additional fees which may be required regarding this request, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.


Applicants request further that a decision on this request be **deferred or delayed** until a final decision has been rendered in *Wyeth v. Dudas*, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

Please direct all correspondence to the undersigned attorney.

Respectfully submitted,

September 4, 2009
Date

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 945-6014
Facsimile: (202) 672-5399


George C. Beck
Attorney for Applicant
Registration No. 38,072

Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 040447-0251
Application Number: 10/632923
Patent Number: 7426303

CLOSE WINDOW	ALL CASES	SELECT CASE	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete			Application Filing Date	08/04/2003	0		
			14 month From Application date	10/04/2004	427		
			3 Year Period Starts	08/04/2006	1,096		
Edit Delete			Non-Final Office Action	11/08/2006	1,192	(765)	
			Non-Final Office Action + 3 months	02/08/2007	1,284		
Edit Delete			Non-Final Office Action Rsp. Rcv'd at PTO	03/07/2007	1,311		27
Edit Delete			Final Office Action	05/21/2007	1,386		
Edit Delete			Final Office Action Response Received at PTO	08/15/2007	1,472		
			Final Office Action + 3 months	08/21/2007	1,478		
Edit Delete			Advisory Action	08/31/2007	1,488		
Edit Delete			Request For Continued Examination (including amendment)	09/21/2007	1,509	(413) 1082	31
			3 Year Period Stopped	09/21/2007	1,509		
Edit Delete			Non-Final Office Action	12/04/2007	1,583		
			Non-Final Office Action + 3 months	03/04/2008	1,674		
Edit Delete			Non-Final Office Action Rsp. Rcv'd at PTO	04/04/2008	1,705		31
Edit Delete			Notice of Allowance	05/15/2008	1,746		
Edit Delete			Issue Fee Paid	08/08/2008	1,831		
Edit Delete			Patent Grant Date	09/16/2008	1,870		
					Totals:	1,082	89
					PTA:	993	

Created and maintained by
FOLEY
FOLEY & LARDNER LLP

Version: 3.02.05

LOGIN: Heidi Hernandez

IP: 10.14.51.31

Foley & Lardner LLP

Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/632,923

Filing or 371(c) Date:	08-04-2003	USPTO Delay (PTO) Delay (days):	765
Issue Date of Patent:	09-16-2008	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	89
Post-Issue Petitions (days):	+0	Total PTA (days):	676
USPTO Adjustment(days):	+0	Explanation Of Calculations	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
08-27-2008	PTA 36 Months		
09-16-2008	Patent Issue Date Used in PTA Calculation		
08-14-2008	Dispatch to FDC		
08-14-2008	Application Is Considered Ready for Issue		
08-08-2008	Issue Fee Payment Verified		
08-08-2008	Issue Fee Payment Received		
05-15-2008	Mail Notice of Allowance		
05-13-2008	Document Verification		
05-13-2008	Notice of Allowance Data Verification Completed		
05-08-2008	Examiner's Amendment Communication		
04-27-2008	Date Forwarded to Examiner		
04-04-2008	Response after Non-Final Action		31
04-04-2008	Request for Extension of Time - Granted		↑
12-04-2007	Mail Non-Final Rejection		↑
12-03-2007	Non-Final Rejection		
10-10-2007	Mail Examiner Interview Summary (PTOL - 413)		
10-02-2007	Examiner Interview Summary Record (PTOL - 413)		
09-26-2007	Date Forwarded to Examiner		
09-26-2007	Date Forwarded to Examiner		
09-21-2007	Request for Continued Examination (RCE)		31
09-26-2007	DISPOSAL FOR A RCE/CPA/129 (express abandonment if CPA)		↑
09-21-2007	Workflow - Request for RCE - Begin		↑
08-31-2007	Mail Advisory Action (PTOL - 303)		↑
08-30-2007	Advisory Action (PTOL-303)		↑
08-24-2007	Date Forwarded to Examiner		↑
08-15-2007	Amendment after Final Rejection		↑
05-21-2007	Mail Final Rejection (PTOL - 326)		↑
05-14-2007	Final Rejection		
03-07-2007	New or Additional Drawing Filed		
03-19-2007	Date Forwarded to Examiner		
03-07-2007	Response after Non-Final Action		27
03-07-2007	Request for Extension of Time - Granted		↑

11-08-2006	Mail Non-Final Rejection	765
11-07-2006	Non-Final Rejection	⬆
08-04-2003	Information Disclosure Statement considered	⬆
06-06-2005	Information Disclosure Statement considered	⬆
09-28-2006	Case Docketed to Examiner in GAU	⬆
04-04-2006	Case Docketed to Examiner in GAU	⬆
03-21-2006	Case Docketed to Examiner in GAU	⬆
06-06-2005	Reference capture on IDS	⬆
06-06-2005	Information Disclosure Statement (IDS) Filed	⬆
06-06-2005	Information Disclosure Statement (IDS) Filed	⬆
06-07-2004	IFW TSS Processing by Tech Center Complete	⬆
08-04-2003	Reference capture on IDS	⬆
08-04-2003	Information Disclosure Statement (IDS) Filed	⬆
08-04-2003	Information Disclosure Statement (IDS) Filed	⬆
08-04-2003	Request for Foreign Priority (Priority Papers May Be Included)	⬆
06-07-2004	Case Docketed to Examiner in GAU	⬆
10-30-2003	Application Return from OIPE	⬆
10-30-2003	Application Return TO OIPE	⬆
10-29-2003	Application Dispatched from OIPE	⬆
10-30-2003	Application Is Now Complete	⬆
10-21-2003	Cleared by OIPE CSR	⬆
09-19-2003	IFW Scan & PACR Auto Security Review	⬆
08-04-2003	Initial Exam Team nn	⬆

Close Window